IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 27TH FEBRUARY 2007 / 8TH PHALGUNA 1928

WP(C).No. 2629 of 2006(K)

PETITIONER:

DR. R.D.VIJAYAKUMAR,
AGED 52 YEARS, S/O.K.R.DAMODHARAN PILLAI,
ASSOCIATE PROFESSOR(SURGEORY),
MEDICAL COLLEGE, CALICUT.

BY ADV. SRI.T.A.UNNIKRISHNAN
SMT.RESHMI POULOSE

RESPONDENTS:
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1. THE GOVERNMENT OF KERALA, REP. BY
SECRETARY, HEALTH DEPARTMENT, SECRETARIAT,
TRIVANDRUM.

2. THE DIRECTOR, MEDICAL EDUCATION
DEPARTMENT, TRIVANDRUM.

3. DR. SREEKUMAR A.,
PROFESSOR(SURGEORY), MEDICAL COLLEGE, CALICUT.

ADDITIONAL RESPONDENTS

4. DR.K.R.ANANDAPADMANABHAN
ASSOCIATE PROFESSOR OF SURGERY
MEDICAL COLLEGE, THIRUVANANTHAPURAM

Impleaded as per order dated 5-6-06 in I.A.No.6941/06

5. P.K.MOHANAN
ASSOCIATE PROFESSOR (SURGERY)
MEDICAL COLLEGE, THRISSUR

Impleaded vide order dated 11-8-06 in I.A.No.11285/06

BY ADV. SRI.G.SASIDHARAN CHEMPAZHANTHIYIL
SRI.S.VISHNU
GOVERNMENT PLEADER SRI.T.T.MUHAMMED
SRI.N.P.SAMUEL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1	**TRUE COPY OF THE GOVT. ORDER DTD. 11-11-97 ISSUED BY R1**
EXT.P2	**TRUE COPY OF THE ORDER DATED 7-10-05 ISSUED BY R1**
EXT.P3	**TRUE COPY OF THE ORDER DATED 4-11-05 ISSUED BY R1**
EXT.P4	**TRUE COPY OF THE REPRESENTATION DTD. 8-10-05 SUBMITTED BY THE PETITIONER.**
EXT.P5	**TRUE COPY OF THE COMMUNICATION DTD. 14-03-06**
EXT.P6	**TRUE COPY OF THE G.O.(P)NO.139/06/H&FWD DTD. 27-07-06**

RESPONDENT'S EXHIBITS

EXT.R5(A)	**TRUE COPY OF NOTIFICATION DTD. 4-7-02 ISSUED BY GOVT.**
EXT.R4(B)	**PHOTOCOPY OF SERVICE DETAILS OF DR.MOHANAN ISSUED BY ACCOUNTANT GENERAL (A&E) KERALA,THIRUVANANTHAPURAM DTD.2-12-05**
EXT.R4(C)	**TRUE COPY OF NOTIFICATION DTD. 27-7-06 ISSUED BY GOVT.**

/True copy/

PA to Judge.

K.M.JOSEPH, J.

W.P.(C).No.2629 OF 2006

Dated this the 27th day of February, 2007

JUDGMENT

Case of the petitioner in brief is as follows:

Petitioner was appointed as Lecturer (General Surgery) in Medical Education Department on 23-07-1983. Third respondent was appointed on 12-12-1983. Therefore petitioner is senior to the third respondent. The next post of promotion is the post of Assistant Professor and both the petitioner and third respondent were promoted on 6-8-1996 vide Ext.P1. By Ext.P2 dated 7-10-2005 seniority is seen conferred in the cadre of Assistant Professor with effect from 12-2-1996 as far as the petitioner is concerned. The next promotion post is the post of Associate Professor. One of the qualification is that he should have served as Assistant Professor for a period of five years. Petitioner was on leave for about 11/2 years (learned Government Pleaders points out that it is 1 year 9 months and 5 days). Third respondent

became qualified on a prior date. Accordingly, third respondent was promoted to the post of Associate Professor on 3-10-2002. After leave, petitioner joined back and acquired the qualification. Thereafter he was also promoted to the post of Associate Professor on 3-9-04.

2. According to the petitioner, in view of Ext.P2, petitioner became eligible for promotion as Associate Professor on 17-11-2002 as that was the date on which he completed 5 years of qualifying service as Assistant Professor. He therefore would say that he should be ranked as No.1 in the select list of Assistant Professors fit for promotion to the category of Associate Professor prepared by the DPC which met on 5-6-2003. Ext.P3 is the order dated 4-11-2005 promoting the third respondent. Petitioner preferred Ext.P4 before the first respondent.

3. The prayer sought for in the writ petition is to direct respondents 1 and 2 to promote the petitioner to the post of Professor (Surgery) by reverting the third respondent and assigning proper placement to the petitioner in the select list of

Associate Professor fit for promotion to the post of Professor, taking note of his seniority in the cadre of Lecturer.

4. Counter is filed by the first respondent, therein it is stated that petitioner is senior in the cadre of lecturer and Assistant Professor. He is not having qualification at the time the third respondent was qualified and his turn did not come for considering him for promotion. It is stated that the eligibility of the petitioner will be assessed as and when his turn comes for promotion as Professor. It is also stated that as per Ext.P1 select list, third respondent was given assignment as Assistant Professor with effect from 30-04-1996 and if the date of assignment of the third respondent is taken into account as claimed by the petitioner, the third respondent will complete five years of teaching experience on 30-04-2001 before the date of eligibility claimed by the petitioner for promotion as Associate Professor.

5. Additional 4th respondent has filed counter affidavit, wherein it is stated that fourth respondent was promoted on 1-04-2003 as Associate Professor. Learned Government Pleader

would point out that he was appointed against a vacancy that arose on 15-11-2002.

6. Additional fifth respondent was included in the select list published on 2002. None of the select list as such is challenged in the proceedings. However, notwithstanding the same, learned counsel for the petitioner submits that there is a subsequent development namely Ext.P5. Ext.P5 is a communication issued by the Government. In Ext.P5 dated 14-03-2006, the Secretary to Government addressed the Director of Medical Education and stated that notional promotion granted to the petitioner is to be treated as duty as per Rule 2(6) (f) of Part I K.S. & SSR and will count for physical teaching experience in the cadre of Assistant Professor and in the circumstances, if on counting the above period with the rest of his service as Associate Professor, if the doctor becomes qualified for promotion as Professor , Director was requested to place his case before the Departmental Promotion Committee at the earliest. It is pointed out by learned counsel for the fourth respondent that the fourth

respondent has preferred a petition before the Government seeking recalling of Ext.P5 order as it was passed without notice to the fourth respondent.

7. I am of the view that as far as the prayer of the petitioner as against the third respondent is concerned, it is without any basis. This is because even if after credit to the period from 12-02-1996 to 3-8-1996 petitioner would admittedly become qualified only on 17-11-2002. The third respondent was promoted on 03-10-2002. Therefore, the prayer sought for in the writ petition as against the third respondent cannot stand. In the light of Ext.P5, the only order that I can pass is, it is for the petitioner to work out his remedy in the light of Ext.P5 and I leave open that right of the petitioner.

K.M.JOSEPH
JUDGE

sv.